

CROWELL & MORING LLP

Justin D. Kingsolver (AZ Bar No. 035476)

JKingsolver@crowell.com

Alexander Urbelis (*pro hac vice*)

AUrbelis@crowell.com

Andrew Pruitt (*pro hac vice*)

APruitt@crowell.com

1001 Pennsylvania Avenue, N.W.

Washington, DC 20004

Telephone: (202) 624-2500

CROWELL & MORING LLP

Warrington S. Parker, III (*pro hac vice*)

WParker@crowell.com

Jacob Canter (*pro hac vice*)

JCanter@crowell.com

Katie Lee (*pro hac vice*)

KatLee@crowell.com

3 Embarcadero Center, 26th Floor

San Francisco, California 94111

Telephone: (415) 986-2800

Attorneys for Plaintiffs True Names, Ltd. and Virgil Griffith

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TRUE NAMES, LTD. d/b/a ETHEREUM
NAME SERVICE, a Singapore
corporation, and VIRGIL GRIFFITH, an
individual,

Plaintiffs,

v.

GODADDY, INC., a Delaware
corporation, GODADDY.COM LLC, a
Delaware corporation, DYNADOT LLC, a
California corporation, and MANIFOLD
FINANCE, INC., a Delaware corporation

Defendants.

Case No. 2:22-cv-01494-JJT

**PLAINTIFFS' OPPOSITION TO
DEFENDANT MANIFOLD
FINANCE, INC.'S MOTION TO
DISMISS FIRST AMENDED
COMPLAINT AND TO VACATE
PRELIMINARY INJUNCTION**

(Oral Argument Requested)

TABLE OF CONTENTS

	Page(s)
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND	2
A. Plaintiffs Registered Their Domain Name With Companies In Arizona	2
B. Manifold Interfered With Plaintiffs’ Contract And Purchased Plaintiffs’ Domain Name.....	2
C. Plaintiffs Sued Manifold, Sought A TRO, And Manifold Failed To Appear	3
III. ARGUMENT	3
A. Manifold Is Subject To Specific Jurisdiction In Arizona.....	3
1. Part 1 Of Calder Test Is Satisfied: Manifold’s Acts Are Intentional.....	4
2. Part 2 Of Calder Test Is Satisfied: Manifold’s Acts Were Expressly Aimed At Arizona.	4
3. Part 3 Of Calder Test Is Satisfied: Manifold Has Caused Harm To Plaintiffs In Arizona.....	6
4. Manifold Fails To Carry Its Burden Of Demonstrating That The Exercise Of Specific Jurisdiction In Arizona Would Be Unreasonable.....	7
B. In The Alternative, The Court Should Grant Plaintiffs’ Request For Jurisdictional Discovery.....	11
C. Fed. R. Civ. P. 60 Provides No Legal Basis For Challenging The Preliminary Injunction And Manifold Waived Its Rights To Challenge The Injunction.	12
1. Fed. R. Civ. P. 60(b) Provides No Basis For Relief.	12
2. Manifold’s Request Is Procedurally Improper If Construed As A Motion For Reconsideration.....	12
3. Manifold Constructively Consented To The Preliminary Injunction And Cannot Challenge It.	13
IV. CONCLUSION	14

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>AirWair Int'l Ltd. v. Schultz</i> , 73 F. Supp. 3d 1225 (N.D. Cal. 2014)	8
<i>Astro-Med, Inc. v. Nihon Kohden Am., Inc.</i> , 591 F.3d 1 (1st Cir. 2009)	5
<i>Axiom Foods, Inc. v. Acerchem Int'l, Inc.</i> , 874 F.3d 1064 (9th Cir. 2017)	4
<i>Ayla, LLC v. Alya Skin Pty. Ltd.</i> , 11 F.4th 972 (9th Cir. 2021)	6
<i>Bancroft & Masters, Inc. v. Augusta Nat'l Inc.</i> , 223 F.3d 1082 (9th Cir. 2000)	8
<i>Boschetto v. Hansing</i> , 539 F.3d 1011 (9th Cir. 2008)	10
<i>Calder v. Jones</i> , 465 U.S. 783 (1984)	3, 4, 6
<i>Chandler v. Roy</i> , 985 F. Supp. 1205 (D. Ariz. 1997)	2
<i>CollegeSource, Inc. v. AcademyOne, Inc.</i> , 653 F.3d 1066 (9th Cir. 2011)	7
<i>Columbia Sportswear N. Am., Inc. v. Ventex Co.</i> , 2019 WL 4783105 (D. Or. Sept. 30, 2019)	6
<i>Crussiah v. Inova Health Sys.</i> , 2015 WL 7294368 (D. Md. Nov. 19, 2015)	5
<i>DIRECTV, Inc. v. EQ Stuff, Inc.</i> , 207 F. Supp. 2d 1077 (C.D. Cal. 2002)	10
<i>Eagle Metal Prod., LLC v. Keymark Enters., LLC</i> , 651 F. Supp. 2d 577 (N.D. Tex. 2009)	6

1	<i>El v. San Diego Unified Sch. Dist.</i> ,	
2	2021 WL 3240298 (S.D. Cal. June 29, 2021), <i>aff'd</i> , 2022 WL 1714284	
3	(9th Cir. May 27, 2022)	13
4	<i>Int'l Soc'y for Prot. of Mustangs & Burros v. U.S. Dep't of Agric.</i> ,	
5	2022 WL 3585831 (D. Ariz. Aug. 22, 2022).....	12
6	<i>Jenkins v. Pooke</i> ,	
7	2009 WL 10692010 (N.D. Cal. July 13, 2009).....	<i>passim</i>
8	<i>Keeton v. Hustler Magazine, Inc.</i> ,	
9	465 U.S. 770 (1984).....	5
10	<i>Langrock v. California</i> ,	
11	2017 WL 729548 (C.D. Cal. Feb. 24, 2017).....	13
12	<i>Laub v. U.S. Dep't of Interior</i> ,	
13	342 F.3d 1080 (9th Cir. 2003)	11
14	<i>Mainstream Media, EC v. Riven</i> ,	
15	2009 WL 2157641 (N.D. Cal. July 17, 2009).....	5
16	<i>Matrixx Initiatives, Inc. v. Capricorn Pharma, Inc.</i> ,	
17	2009 WL 10673413 (D. Ariz. Apr. 23, 2009)	9
18	<i>Microsoft Corp. v. Does 1-18</i> ,	
19	2014 WL 1338677 (E.D. Va. Apr. 2, 2014)	7
20	<i>Northbrook Digit., LLC v. Vendio Servs., Inc.</i> ,	
21	625 F. Supp. 2d 728 (D. Minn. 2008).....	7
22	<i>Off. Depot, Inc. v. Zuccarini</i> ,	
23	621 F. Supp. 2d 773 (N.D. Cal. 2007), <i>aff'd</i> , 596 F.3d 696 (9th Cir.	
24	2010)	1, 5
25	<i>Omeluk v. Langsten Slip & Batbyggeri A/S</i> ,	
26	52 F.2d 267 (9th Cir. 1995)	2
27	<i>Panavision Int'l, L.P. v. Toeppen</i> ,	
28	141 F.3d 1316 (9th Cir. 1998)	8
	<i>Prudential Real Est. Affiliates, Inc. v. PPR Realty, Inc.</i> ,	
	204 F.3d 867 (9th Cir. 2000)	12
	<i>Resnick v. Rowe</i> ,	
	283 F. Supp. 2d 1128 (D. Haw. 2003)	5

1	<i>Robinson Corp. v. Auto-Owners Ins. Co.</i> ,	
2	304 F. Supp. 2d 1232 (D. Haw. 2003)	10
3	<i>Rozier v. Dep't of Homeland Sec. Fed. Protective Serv.</i> ,	
4	2022 WL 2199938 (C.D. Cal. Mar. 7, 2022)	13
5	<i>SEC v. Christian Stanley, Inc.</i> ,	
6	2012 WL 13012497 (C.D. Cal. Apr. 3, 2012)	12
7	<i>Semitool, Inc. v. Tokyo Electron Am., Inc.</i> ,	
8	208 F.R.D. 273 (N.D. Cal. 2002)	11
9	<i>Schwarzenegger v. Fred Martin Motor Co.</i> ,	
10	374 F.3d 797(9th Cir. 2004)	4
11	<i>Skye Orthobiologics, LLC v. CTM Biomedical, LLC</i> ,	
12	2021 WL 6102520 (C.D. Cal. Feb. 9, 2021)	5
13	<i>Tuazon v. R.J. Reynolds Tobacco Co.</i> ,	
14	433 F.3d 1163 (9th Cir. 2006)	10
15	<i>United States v. Doe</i> ,	
16	2020 WL 1880974 (W.D. Tex. Mar. 31, 2020)	13
17	<i>Will Co. v. Lee</i> ,	
18	47 F.4th 917 (9th Cir. 2022)	4
19	<i>Wilson v. PTT, LLC</i> ,	
20	351 F. Supp. 3d 1325 (W.D. Wash. 2018)	7
21	<i>Workgroup Tech. Corp. v. MGM Grand Hotel, LLC</i> ,	
22	246 F. Supp. 2d 102 (D. Mass. 2003)	9
23	<i>World Lebanese Cultural Union, Inc. v. World Lebanese Cultural Union of</i>	
24	<i>N.Y., Inc.</i> ,	
25	2011 WL 5118525 (N.D. Cal. Oct. 28, 2011)	8
26	<i>Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme</i> ,	
27	433 F.3d 1199 (9th Cir. 2006)	4, 8
28	<u>Statutes</u>	
	Fed. R. Civ. P. 60	12
	Fed. R. Civ. P. 60(b)	12
	Fed. R. Civ. P. 60(b)(1)	12

1	Fed. R. Civ. P. 60(b)(4)	12
2	Fed. R. Civ. P. 60(b)(6)	12
3	<u>Other Authorities</u>	
4	16 A.R.S. Rules of Civil Procedure, Rule 4(e)(2)	4
5	L.R. Civ 7.2(g)(1)	1, 12, 13
6	L.R. Civ 7.2(g)(2)	13
7	L.R. Civ 7.2(i)	3, 13

1 Plaintiffs True Names Ltd. and Virgil Griffith hereby submit their Opposition to
2 Defendant Manifold Finance, Inc.’s Motion to Dismiss and to Vacate the Preliminary
3 Injunction (Dkt. 37) (“Opposition”).

4 I. INTRODUCTION

5 Courts have already determined the issue of personal jurisdiction under the
6 circumstances of this case. Defendant Manifold Finance, Inc. (“Manifold”) subjected
7 itself to Arizona jurisdiction because the eth.link domain name’s registry and registrar,
8 the GoDaddy defendants, are located in Arizona. *See, e.g., Off. Depot, Inc. v. Zuccarini*,
9 621 F. Supp. 2d 773, 778 (N.D. Cal. 2007) (finding in rem jurisdiction at the location of
10 the domain name’s registry or registrar), *aff’d*, 596 F.3d 696 (9th Cir. 2010); *Jenkins v.*
11 *Pooke*, 2009 WL 10692010, at *4-6 (N.D. Cal. July 13, 2009) (same), *report and*
12 *recommendation adopted*, 2009 WL 10691375 (N.D. Cal. Aug. 19, 2009).

13 As for the reasonableness of exercising such jurisdiction, Manifold bears the
14 burden of showing that it would not be reasonable. Manifold has submitted nothing
15 except its own say-so. Not only is that not enough, the facts demonstrate that the
16 exercise of jurisdiction falls well within reason.

17 If the Court disagrees with Plaintiffs at this stage, Plaintiffs respectfully request
18 leave for targeted jurisdictional discovery.

19 Finally, Manifold’s request to void or vacate the preliminary injunction should be
20 denied. First, Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 60(b) cannot be used
21 to overturn the injunction. Second, Manifold cannot challenge the preliminary
22 injunction after having waived its rights to appear and contest the issuance of the
23 injunction in the first place. Third, Manifold has failed to provide this Court any valid
24 reason to question its earlier decision as required by this Court’s rules. *See* L.R. Civ
25 7.2(g)(1). Having waited 39 days to claim that there is something wrong with the
26 preliminary injunction, there is no basis to excuse Manifold’s waiver or its failure to
27 abide by this Court’s rules yet again.
28

For these reasons, the motion should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs Registered Their Domain Name With Companies In Arizona

True Names, Ltd. (“TNL”), founded in 2017 by Plaintiff Virgil Griffith and others, provides the software for the Ethereum Name Service (“ENS”). (Whittaker Decl. ¶ 3.¹) In 2018, Griffith purchased the registration rights for the “eth.link” domain on behalf of and for the benefit of TNL. (*Id.* ¶¶ 7, 10.) The eth.link domain allows ENS domains to be accessible on the traditional Domain Name System (“DNS”) system, essentially acting as a gateway between the traditional DNS and the ENS systems. (*Id.* ¶¶ 4-5.)

At all relevant times, the eth.link domain was subject to a contract between registrant Griffith and registrar GoDaddy, Inc. and/or GoDaddy.com LLC (collectively, “GoDaddy”), both of which are Arizona businesses. (*Id.* ¶¶ 8-9.)

In addition, ENS at all relevant times had users who live in Arizona and conduct business and other transactions in Arizona in reliance on the eth.link domain. (*Id.* ¶ 6.)

B. Manifold Interfered With Plaintiffs’ Contract And Purchased Plaintiffs’ Domain Name

On August 25, 2022, GoDaddy publicly announced that the eth.link domain name “expired” on July 26, 2022, was “progressing through the expiration lifecycle,” and “absent a renewal by the current registrant” (Plaintiff Griffith) was “expected to be returned to the registry”—that is, be available to purchase by the public—on September 5, 2022. (*Id.* ¶ 12; Ex. A.)

However, on September 3, 2022, even before the date that GoDaddy announced the domain would return to the registry, Manifold announced on Twitter that it had

¹ The Court may consider evidence in the form of declarations and exhibits in deciding Defendant Manifold’s motion. *See, e.g. Omeluk v. Langsten Slip & Bathyggeri A/S*, 52 F.2d 267, 268 (9th Cir. 1995); *Chandler v. Roy*, 985 F. Supp. 1205, 1209 (D. Ariz. 1997) (considering declarations filed in support of opposition to motion to dismiss).

acquired ownership of the eth.link domain after purchasing it through an auction managed by Defendant Dynadot LLC (“Dynadot”). (*Id.* ¶¶ 13-14.)

C. **Plaintiffs Sued Manifold, Sought A TRO, And Manifold Failed To Appear**

Plaintiffs initiated this action on September 5, 2022, by filing a Complaint, (Dkt. 1), and an Ex Parte Motion for a Temporary Restraining Order (“TRO Motion”) (Dkt. 2). Plaintiffs brought claims against GoDaddy, Dynadot, and Manifold alleging intentional interference with prospective economic advantage and unfair competition. (Dkt. 1.) Plaintiffs properly notified and served all three Defendants including Manifold and its counsel. (Dkt. 10 at 2; Dkt. 12; Dkt. 16 at 2-3; Dkt. 22 at 2-3; Dkt. 28; Dkt. 32.)

The Court ordered Defendants to file a Response to the TRO Motion and scheduled a hearing. (Dkt. 11 at 3.) The Court warned that “if Defendants fail to file a Response to Plaintiffs’ TRO Motion [] or fail to appear at the hearing, the Court will deem either failure to be Defendants’ consent to the Motion being granted.” (*Id.* (citing L.R. Civ 7.2(i).) Manifold “failed to file any response” and “failed to appear at the hearing.” (Dkt. 19 at 2.)

The Court granted Plaintiffs a preliminary injunction and “deem[ed] Defendants’ failure to respond as consent to the granting of Plaintiffs’ Motion.” (*Id.*)

On September 21, 2022, Plaintiffs filed an Amended Complaint with an additional third claim against Manifold for conversion. (Dkt. 24.)

Manifold filed its Motion to Dismiss and to Vacate the Preliminary Injunction, on October 18, 2022, 39 days after the issuance of the preliminary injunction. (Dkt. 37.)

III. ARGUMENT

A. **Manifold Is Subject To Specific Jurisdiction In Arizona.**

Courts have already made the determination that such facts support the exercise of jurisdiction over a defendant because they satisfy the *Calder v. Jones* “effects” test. Under the *Calder* test, Manifold “(1) committed an intentional act; (2) expressly aimed

at the forum state; (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017) (citing *Calder v. Jones*, 465 U.S. 783, 803 (1984)); *see also Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004); *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006).²

1. Part 1 Of *Calder* Test Is Satisfied: Manifold’s Acts Are Intentional.

Contrary to Manifold’s suggestion otherwise, it is enough that Manifold purchased the eth.link domain, which Plaintiffs allege was wrongful. (Dkt. 24 at 10.) Courts have already held that either purchasing or transferring a domain name constitutes an intentional act for jurisdictional purposes. *See Will Co. v. Lee*, 47 F.4th 917, 922 (9th Cir. 2022) (“purchasing a domain name” is an “intentional act”); *Jenkins*, 2009 WL 10692010, at *4 (“Mr. Pooke committed an intentional act by unlawfully . . . transferring the domain name mod.com to himself.”).

2. Part 2 Of *Calder* Test Is Satisfied: Manifold’s Acts Were Expressly Aimed At Arizona.

Manifold further contends that its “intentional suit-related conduct was not expressly aimed at Arizona” because its “purchase of the Domain was consummated with Dynadot” and mere awareness of GoDaddy’s conduct or connection to Arizona is insufficient to create jurisdiction. (Dkt. 37 at 11.)

But Manifold’s purchase was an act necessarily directed at Arizona. Arizona was the place of the registry of the eth.link domain name and the location of the registrar before the wrongful acts were undertaken. Indeed, it is only because of the wrongful acts that Manifold can argue that it consummated a deal with Dynadot. *See Jenkins*, 2009 WL 10692010, at *5 (concluding that specific jurisdiction existed because the

² Arizona’s long-arm statute authorizes “personal jurisdiction over parties, whether found within or outside the state, to the maximum extent permitted by the Constitution of this state and the Constitution of the United States.” 16 A.R.S. Rules of Civil Procedure, Rule 4(e)(2).

wrongful acts occurred in the district where registrar of domain name resided); *see also* *Zuccarini*, 621 F. Supp. 2d at 778 (domain name located in district of registrar and registry and wrongful acts occurred there). The fact that Manifold “may not have known that [GoDaddy] is geographically located in [Arizona] is not dispositive.” *Jenkins*, 2009 WL 10692010, at *5.³

To be sure, neither Plaintiff is a resident of Arizona. However, that does not matter. There is no requirement that a plaintiff reside in the state in which suit is brought. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984); *Resnick v. Rowe*, 283 F. Supp. 2d 1128, 1137 (D. Haw. 2003); *Jenkins*, 2009 WL 10692010, at *5 (in domain name case noting this and finding special jurisdiction).

Finally, Manifold contends that it “has not engaged in any Arizona-related activities at all.” (Dkt. 37 at 13.) But as a legal matter, it is enough that Manifold’s acts caused harm and impacted relationships in Arizona. *See, e.g., Skye Orthobiologics, LLC v. CTM Biomedical, LLC*, 2021 WL 6102520, at *14 (C.D. Cal. Feb. 9, 2021) (“Plaintiffs have sufficiently alleged that but for Rogers and VMD’s contacts with the California VA hospitals, as well as with Skye, their tortious interference claim would not have arisen.”); *see also Astro-Med, Inc. v. Nihon Kohden Am., Inc.*, 591 F.3d 1, 10 (1st Cir. 2009) (“Nihon Kohden’s conduct in Florida and California was a cause of the breach of contract—the actual injury—that occurred in Rhode Island.”); *Crussiah v. Inova Health Sys.*, 2015 WL 7294368 (D. Md. Nov. 19, 2015) (the tortious interference with prospective economic advantage claim arose from activities directed at Maryland, which was the focal point of the alleged contact, where the contracts were breached, and where plaintiff suffered harm suffered).

³ *Mainstream Media, EC v. Riven*, 2009 WL 2157641 (N.D. Cal. July 17, 2009), is a case where the wrongful acts that caused the domain name to be transferred took place somewhere other than in California and the California registrar held the domain name after the wrongful acts and then, by the time of suit, had transferred the domain name to a registrar outside of the United States. Therefore, the Court found that such transitory connection to California was insufficient to assert specific jurisdiction. That is not the case here.

1 In short, Plaintiffs’ claims “arise[] out of or relate[] to [Manifold]’s forum-related
2 activities” because Manifold’s “forum-related conduct consisted of the unlawful
3 [purchasing and transferring of] the domain name . . . , which was maintained by the
4 [GoDaddy] registry.” *Jenkins*, 2009 WL 10692010, at *5 (citing *Boschetto v. Hansing*,
5 539 F.3d 1011, 1019 (9th Cir. 2008)).

6 Finally, Manifold is subject to specific jurisdiction in Arizona because Plaintiffs’
7 unfair competition claim shares a common nucleus of operative facts with its tortious
8 interference and conversion claims. *See, e.g., Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th
9 972, 979 (9th Cir. 2021) (exercising specific jurisdiction because plaintiff’s
10 “unfair competition claims ‘arise out of or result from’ [defendant’s] ‘forum-related
11 activities’”); *Columbia Sportswear N. Am., Inc. v. Ventex Co.*, 2019 WL 4783105, at *10
12 (D. Or. Sept. 30, 2019) (“Thus, because Columbia’s breach of contract claim shares a
13 common nucleus of operative facts with its unfair competition claims . . . the Court
14 exercises pendant personal jurisdiction over Ventex for Columbia’s unfair
15 competition claims.”); *Eagle Metal Prod., LLC v. Keymark Enters., LLC*, 651 F. Supp.
16 2d 577, 589 (N.D. Tex. 2009) (“The analysis for the common law unfair
17 competition claim is identical to the tortious interference claim, defamation and
18 disparagement claims above, and the Court has jurisdiction over this claim as well.”).
19 Given that Manifold’s conduct is expressly and intentionally aimed at Arizona, the first
20 two steps of the *Calder* test are met here.

21 3. Part 3 Of *Calder* Test Is Satisfied: Manifold Has Caused Harm 22 To Plaintiffs In Arizona.

23 Manifold contends that “Plaintiffs do not even allege that they suffered harm in
24 Arizona, let alone that Manifold was aware of any potential harm that might occur in
25 Arizona.” (Dkt. 37 at 12.) However, Manifold does not deny the allegation contained in
26 Plaintiffs’ Complaint and Amended Complaint that it was aware of the agreement
27 between Plaintiffs and GoDaddy regarding the eth.link domain name. (*Compare*
28 Complaint ¶ 55 and Amended Complaint ¶ 55 with Dkt. 37-1.)

Given this, when Manifold engaged in the acts alleged in the Amended Complaint, it had to know, as a matter of law and fact, that the injury would occur in Arizona at the least. Manifold “knew that it was likely that harm would be suffered in the state where . . . the registry for [the eth.link domain] is located.” *Jenkins*, 2009 WL 10692010, at *5.

Moreover, ENS has users of the eth.link domain who live in Arizona and conduct business and other transactions in Arizona using the eth.link domain. (Whittaker Decl. ¶ 6.) That too situates the harm in Arizona. *See, e.g., Microsoft Corp. v. Does 1-18*, 2014 WL 1338677, at *2 (E.D. Va. Apr. 2, 2014) (exercising personal jurisdiction over defendant who caused harm to plaintiff, its customers, and others in the forum through domain names located in the forum); *Wilson v. PTT, LLC*, 351 F. Supp. 3d 1325, 1335 (W.D. Wash. 2018) (harm was suffered in Washington by consumers that defendant was aware existed); *Northbrook Digit., LLC v. Vendio Servs., Inc.*, 625 F. Supp. 2d 728, 767 (D. Minn. 2008) (minimal contacts were established by Minnesota residents who downloaded and used defendant’s software).

4. Manifold Fails To Carry Its Burden Of Demonstrating That The Exercise Of Specific Jurisdiction In Arizona Would Be Unreasonable.

Because Plaintiffs have established a prima facie case demonstrating specific jurisdiction, “the burden then shifts to [defendant] to set forth a ‘compelling case’ that the exercise of jurisdiction would not be reasonable.” *See CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)). Courts consider seven factors: (1) the extent of a defendant’s purposeful interjection into the forum; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating the dispute; (5) the most efficient judicial resolution of the dispute; (6) the importance of the forum to the plaintiff’s interest in convenient and effective relief; and (7) the existence of an alternative forum. *See CollegeSource*, 653 F.3d at 1079 (citing *Dole Food Co. v. Watts*,

303 F.3d 1104, 1114 (9th Cir. 2002)). “No one factor is dispositive; a court must balance all seven.” *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1323 (9th Cir. 1998), holding modified by *Yahoo!*, 433 F.3d 1199.

While claiming each factor weighs in its favor, Manifold has failed to make any actual showing that this Court can consider that the exercise of jurisdiction would be unreasonable. Manifold provides no evidence that these seven factors warrant a ruling in its favor. (Dkt. 37 at 14-15.). The fact that Manifold merely asserts “without elaboration that jurisdiction would be unreasonable” is not enough. *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1089 (9th Cir. 2000), holding modified by *Yahoo!*, 433 F.3d 1199.⁴ As a result, Manifold fails to carry the burden of demonstrating that the following seven factors warrant a finding in its favor.

Not only has Manifold failed to make any showing, all seven factors favor the exercise of jurisdiction over Manifold.

First, Manifold purposefully interjected itself into Arizona by purchasing the eth.link domain name. *See* Sections I., A. and B., *supra*.

Second, Manifold fails to demonstrate that the exercise of jurisdiction would be unreasonable or burdensome, and merely asserts that its “owner and primary employee is in California” and that “retention of Arizona counsel” and “travel back and forth” to “a neighboring state” “is expensive.” (Dkt. 37 at 14.) However, these kinds of assertions which lack “factual showing” fail to carry a defendant’s burden. *See AirWair Int’l Ltd. v. Schultz*, 73 F. Supp. 3d 1225 (N.D. Cal. 2014) (“Here, NPS has stated that forcing NPS to litigate in California would impose a great burden on NPS, but NPS makes no factual showing of this burden other than to point out that NPS’s headquarters in the United Kingdom is 5,000 miles away.”).

⁴ To the extent that Manifold attempts to do so, it cannot now try to cure its failure to make its evidentiary showing in reply. *See World Lebanese Cultural Union, Inc. v. World Lebanese Cultural Union of N.Y., Inc.*, 2011 WL 5118525, at *6 n.3 (N.D. Cal. Oct. 28, 2011) (defendant fails to support its assertion of purposeful direction because “[n]ew evidence or analysis presented for the first time in a reply is [improper] and will not be considered”).

1 Even were litigation in Arizona less convenient, the inconvenience does not rise
 2 to the requisite level—“a deprivation of due process.” *Matrixx Initiatives, Inc. v.*
 3 *Capricorn Pharma, Inc.*, 2009 WL 10673413, at *7 (D. Ariz. Apr. 23, 2009).
 4 “Particularly in light of modern communication technology, [Manifold] will not be
 5 unduly burdened by the exercise of jurisdiction in” Arizona. *Id.* (citing *Dole Food*, 303
 6 F.3d at 1155; *Panavision*, 141 F.3d at 1323); *see also Workgroup Tech. Corp. v. MGM*
 7 *Grand Hotel, LLC*, 246 F. Supp. 2d 102, 115 (D. Mass. 2003) (“MGM must demonstrate
 8 that the exercise of jurisdiction in the present circumstances is onerous in a special,
 9 unusual, or other constitutionally significant way.”). In addition, Manifold has already
 10 found and retained counsel based in Phoenix, Arizona to address in-court appearances.

11 Third, Manifold contends that “any attempt . . . to enforce Arizona tort law
 12 against [it] would be extraterritorial and would infringe on the sovereignty of California
 13 over conduct occurring within its borders.” (Dkt. 37 at 14.) However, “[t]he importance
 14 of state sovereignty carries significantly less weight in a dispute between U.S. residents
 15 than it does when jurisdiction is asserted over a foreign defendant.” *Matrixx Initiatives*,
 16 2009 WL 10673413, at *7 (citing *Decker Coal Co. v. Commonwealth Edison Co.*, 805
 17 F.2d 834, 841 (9th Cir. 1986)). While California “has an interest in litigation involving”
 18 Manifold, “that interest does not sufficiently weigh against the exercise of jurisdiction
 19 in Arizona.” *Id.*

20 Fourth, Manifold contends that it “is a stranger to Plaintiffs’ actual dispute . . .
 21 such that Arizona has no interest in adjudicating anything regarding Manifold.” (Dkt. 37
 22 at 15.) But Arizona has an interest in adjudicating the dispute because it involves a
 23 contract entered into by an Arizona company and a property that was registered by an
 24 Arizona company. Although “no state ‘has a uniquely strong interest’” in disputes
 25 arising out of private commercial transactions, if the “events and alleged harm [] took
 26 place in Arizona,” Arizona “has at least as great an interest in adjudicating this dispute
 27 as” any other state. *Matrixx Initiatives*, 2009 WL 10673413, at *7 (quoting *Mattel, Inc.*
 28 *v. Greiner & Hausser GmbH*, 354 F.3d 857, 868 (9th Cir. 2003)). “Moreover, [Arizona]

1 does have an interest in the litigation even though Plaintiffs are not forum residents
2 because the tort here was essentially effected in [Arizona] through the . . . transfer of the
3 domain name, maintained by the [Arizona]-based registry.” *Jenkins*, 2009 WL
4 10692010, at *6.

5 Fifth, Manifold fails to “identify any specific hardship or otherwise comment on
6 this factor, thus abdicating its burden on this point” regarding the most efficient judicial
7 resolution of the dispute. *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1171
8 (9th Cir. 2006). Arizona is the most advantageous forum for all parties to ensure
9 efficient judicial resolution of this action, especially given that two of the other
10 defendants in this action have their principal place of business in Arizona. In addition,
11 “[t]he most efficient resolution will be achieved by a court that is already ‘familiar with
12 the facts and procedural history of the litigation.’” *DIRECTV, Inc. v. EQ Stuff, Inc.*, 207
13 F. Supp. 2d 1077, 1082 (C.D. Cal. 2002) (quoting *Ballard v. Savage*, 65 F.3d 1495, 1502
14 (9th Cir. 1995)). “This Court has already invested time and resources with this case,
15 having issued . . . a Preliminary Injunction after extensive briefing on the merits.” *Id.*
16 Therefore, “the most efficient forum for resolution of the dispute is this forum.” *Id.*

17 Sixth, Manifold fails to “identify any specific hardship or otherwise comment on
18 this factor, thus abdicating its burden on this point” regarding the importance of the
19 forum to Plaintiffs’ interest in convenient and effective relief. *Tuazon*, 433 F.3d at
20 1171. Although this factor “is not given much weight,” “the difficulty inherent in
21 bringing this action in another forum cannot be completely ignored.” *Robinson Corp. v.*
22 *Auto-Owners Ins. Co.*, 304 F. Supp. 2d 1232, 1241 (D. Haw. 2003). Maintaining
23 jurisdiction in Arizona would ensure convenient and effective relief for Plaintiffs.

24 Lastly, an alternative forum such as California is neither necessary nor
25 appropriate. As such, exercising specific jurisdiction over Manifold is reasonable, and
26 comports with traditional notions of fair play and substantial justice. *See Boschetto*, 539
27 F.3d at 1019.
28

B. In The Alternative, The Court Should Grant Plaintiffs' Request For Jurisdictional Discovery.

This Court has broad power to grant limited, expedited jurisdictional discovery where necessary to investigate its own jurisdiction over a matter. *See Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003). “[D]iscovery should be granted when . . . the jurisdictional facts are contested or more facts are needed.” *Id.* (citing *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977)). Good cause for leave exists “where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). The requesting party will be prejudiced if discovery is denied and there is a reasonable probability that the outcome would have been different had discovery been allowed. *See Laub*, 342 F.3d at 1093. Moreover, there is no prejudice to a defending party when the discovery sought is “narrowly tailored” to seek information that is “not otherwise accessible” and “will substantially contribute to moving th[e] case forward.” *Semitool*, 208 F.R.D. at 276.

Here, if the Court does not deny Manifold’s Motion outright and to the extent the Court deems jurisdictional factfinding necessary, the Court should grant Plaintiffs leave for jurisdictional discovery.

The discovery sought is this: documents from Manifold relating to its purchase of the eth.link domain name, including pre-purchase documents relating to the purchase.

Discovery of this information “will substantially contribute to moving th[e] case forward” by uncovering the extent to which the three defendants were aware of, communicated, and interacted with each other. *Id.* Any prejudice to Manifold would be minimal because any correspondence among the defendants would be relevant to the merits of the case and, thus, discoverable in the future anyway.

///

C. Fed. R. Civ. P. 60 Provides No Legal Basis For Challenging The Preliminary Injunction And Manifold Waived Its Rights To Challenge The Injunction.

1. Fed. R. Civ. P. 60(b) Provides No Basis For Relief.

Manifold contends that the Court’s preliminary injunction should be vacated pursuant to Fed. R. Civ. P. 60(b)(1), (4), and (6). (Dkt. 37 at 16.) However, Fed. R. Civ. P. 60(b) cannot be used to challenge a preliminary injunction. *Prudential Real Est. Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 880 (9th Cir. 2000) (“[A] preliminary injunction is not a ‘final judgment, order, or proceeding’ that may be addressed by a motion under Rule 60(b).”); *Int’l Soc’y for Prot. of Mustangs & Burros v. U.S. Dep’t of Agric.*, 2022 WL 3585831, at *1 (D. Ariz. Aug. 22, 2022) (“Plaintiff’s reliance on Rule 60(b)(2) is misplaced.”); *SEC v. Christian Stanley, Inc.*, 2012 WL 13012497, at *1 (C.D. Cal. Apr. 3, 2012) (“Rule 60(b) is not the appropriate vehicle through which Defendant can request dissolution of the preliminary injunction.”).

The motion fails on that ground alone.

2. Manifold’s Request Is Procedurally Improper If Construed As A Motion For Reconsideration.

Although Manifold never states it, its request to void or vacate the preliminary injunction is actually a motion for reconsideration. *See Int’l Soc’y*, 2022 WL 3585831, at *1 (“Regardless, the Court has discretion to reconsider and vacate a prior order . . . and the Court will simply construe Plaintiff’s Motion as requesting the Court to exercise such discretion in this case.”).

Manifold’s request as a motion for reconsideration is procedurally improper. Local Rule Civ. 7.2(g)(1) requires that Manifold “point out with specificity the matters that [Manifold] believes were overlooked or misapprehended by the Court, any new matters being brought to the Court’s attention for the first time and the reasons they were not presented earlier, and any specific modifications being sought in the Court’s Order.” *Id.* Manifold only says that the injunction was mistakenly entered due to a lack of jurisdiction, but fails to state why any issues it had were not presented earlier.

Next, Manifold's request is untimely. *Id.* at 7.2(g)(2) requires that "any motion for reconsideration shall be filed no later than fourteen (14) days after the date of the filing of the Order that is the subject of the motion." *Id.* In this case, Manifold waited 39 days following the issuance of the preliminary injunction on September 9, 2022 to file its request on October 18, 2022. The motion fails on procedural grounds.

3. Manifold Constructively Consented To The Preliminary Injunction And Cannot Challenge It.

Finally, Manifold has waived its right to challenge the preliminary injunction.

Manifold did nothing to challenge the TRO or the preliminary injunction despite receiving notice and despite *knowing* that its failure to appear or contest the motion was consent. On September 6, 2022, the Court warned that "if Defendants fail to file a Response to Plaintiffs' TRO Motion [] or fail to appear at the hearing, the Court will deem either failure to be Defendants' consent to the Motion being granted." (Dkt. 11 at 3 (citing L.R. Civ. 7.2(i).))

Despite this, Manifold failed to appear or say anything at all. Manifold then sat for 39 days saying nothing about the preliminary injunction. This is waiver and abandonment. *See United States v. Doe*, 2020 WL 1880974, at *2 (W.D. Tex. Mar. 31, 2020) ("Defendant did not file a response in opposition to the United States' application for a preliminary injunction and did not appear at the hearing. Defendant's failure to appear constitutes a waiver of his right to respond to the United States' application for a preliminary injunction."); *El v. San Diego Unified Sch. Dist.*, 2021 WL 3240298, at *2 (S.D. Cal. June 29, 2021) ("[T]he Court finds that Plaintiff's failure to oppose constitutes a waiver of the issues raised in Defendant's motion to dismiss."), *aff'd*, 2022 WL 1714284 (9th Cir. May 27, 2022); *Rozier v. Dep't of Homeland Sec. Fed. Protective Serv.*, 2022 WL 2199938, at *3 (C.D. Cal. Mar. 7, 2022) ("If a party fails to respond to an argument made on a motion to dismiss, a court may find such failure constitutes waiver or abandonment of the issue."); *Langrock v. California*, 2017 WL 729548, at *3 (C.D. Cal. Feb. 24, 2017) ("[A] notice of removal must include all grounds for removal,

and the failure to do so results in a waiver of grounds existing at the time of the notice's filing that were not included.").

IV. CONCLUSION

For the reasons set forth herein, Manifold Finance, Inc.'s Motion to Dismiss and to Vacate the Preliminary Injunction (Dkt. 37) should be denied.

Dated: November 17, 2022

CROWELL & MORING LLP

By: /s/ Katie Lee

Justin D. Kingsolver (AZ Bar No. 035476)
 Alexander Urbelis (*pro hac vice*)
 Andrew Pruitt (*pro hac vice*)
 1001 Pennsylvania Avenue, N.W.
 Washington, DC 20004
 Telephone: (202) 624-2500
JKingsolver@crowell.com
AUrbelis@crowell.com
APruitt@crowell.com

CROWELL & MORING LLP
 Warrington S. Parker, III (*pro hac vice*)
 Jacob Canter (*pro hac vice*)
 Katie Lee (*pro hac vice*)
 3 Embarcadero Center, 26th Floor
 San Francisco, CA 94111
 Telephone: (415) 986-2800
WParker@crowell.com
JCanter@crowell.com
KatLee@crowell.com